

1 **WO**

2
3
4
5
6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
8

9 D.F., on behalf of K.P.S.F.,

10 Plaintiff,

11 vs.

12 Tucson Unified School District; et al.,

13 Defendants.
14

No. CV 23-00212-TUC-JCH (MAA)

ORDER

15
16 On November 16, 2023, the defendants filed the pending motion to dismiss or, in the
17 alternative, quash purported service. (Doc. 18.) They argue, among other things, that the
18 plaintiff's purported notice of service by mail should be quashed for failure to comply with
19 the Federal Rules of Civil Procedure and the incorporated Arizona Rules of Civil Procedure.
20 The plaintiff did not file a response. *See* LRCiv 7.2(i). The motion to quash will be granted.
21 The court does not reach the defendants' alternative arguments.

22 Previously, on August 16, 2023, this court ordered that the deadline for service be
23 extended to October 16, 2023, pursuant to Fed.R.Civ.P. 4(m). (Doc. 15.) The plaintiff was
24 cautioned that if he did not, by October 23, 2023, file a proof of service pursuant to Rule 4(l)
25 or provide notice that he had requested and procured a waiver of personal service pursuant
26 to Rule 4(d) as to each defendant, this action could be dismissed without further notice.
27 Fed.R.Civ.P; *see also* LRCiv. 7.2(i). On October 19, 2023, the plaintiff filed what appears
28 to be notice of service by mail. (Doc. 17.)


1 Rule 4(e) does not explicitly permit service by mail, but it does permit service by
2 “following state law for serving a summons in an action brought in courts of general
3 jurisdiction in the state where the district court is located or where service is made.”
4 Fed.R.Civ.P. The Arizona Rules of Civil Procedure provide as follows: “If a party shows
5 that the service provided by Rule 4.1(c) through 4.1(k)--including an alternative means of
6 service--is impracticable, the court may, on motion and without notice to the person to be
7 served, order that service be accomplished by publication.” Ariz. R. Civ. P. 4.1(l). Service
8 by publication is therefore permissible but only pursuant to court order on motion by a party.

9 The plaintiff did not file a motion pursuant to Rule 4.1(l), and this court did not issue
10 an order permitting service by publication. Ariz. R. Civ. P. The plaintiff’s purported notice
11 of service by publication, therefore, must be quashed for failure to comply with Ariz.R.Civ.P.
12 4.1(l) and Fed.R.Civ.P. 4(e).

13
14 IT IS ORDERED that the plaintiff’s purported notice of service by publication is
15 quashed. (Doc. 17.) The deadline for service is extended to February 1, 2024. Fed.R.Civ.P.
16 4(m). If the plaintiff does not, by February 8, 2024, file a proof of service pursuant to Rule
17 4(l) or provide notice that he has requested and procured a waiver of personal service
18 pursuant to Rule 4(d) as to each defendant, this action may be dismissed without further
19 notice. Fed.R.Civ.P.; *see* LRCiv. 7.2(i). The deadline for service will not be extended again
20 absent extraordinary circumstances.

21 DATED this 11th day of December, 2023.

22
23
24
25
26
27
28



Honorable Michael A. Ambri
United States Magistrate Judge